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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------|
| 10/717,007  | 11/19/2003  | Erik J. Burckart     | RSW9-2003-0230US11<br>(7161- | 6713             |
| 46320 7590 04/04/2007<br>CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP<br>STEVEN M. GREENBERG<br>950 PENINSULA CORPORATE CIRCLE<br>SUITE 3020<br>BOCA RATON, FL 33487 |             |                      | EXAMINER<br>NGUYEN, VAN H    |                  |
|   |             |                      | ART UNIT<br>2194             | PAPER NUMBER     |
| SHORTENED STATUTORY PERIOD OF RESPONSE  |             | MAIL DATE            | DELIVERY MODE                |                  |
| 3 MONTHS  |             | 04/04/2007           | PAPER                        |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/717,007

Applicant(s)

BURCKART ET AL.

Examiner

VAN H. NGUYEN

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/19/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is responsive to the application filed 11/19/2003.

Claims 1-20 are currently pending in this application.

Examiner requests that Applicant review the application carefully for informalities including typographical errors.

### **Information Disclosure Statement**

2. The Applicants' Information Disclosure Statement, filed 11/19/2003, has been received, entered into the record, and considered.

### **Claim Rejections - 35 USC § 101**

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The current focus of the Patent Office in regard to

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statutory inventions under 35 U.S.C. § 101 for method claims and claims that recite a judicial exception (software) is that the claimed invention recite a practical application. Practical application can be provided by a physical transformation or a useful, concrete and tangible result. No physical transformation is recited and additionally, the final result of the claims is not a useful, concrete and tangible result.

Claims which are broad enough to read on statutory subject matter or on non-statutory subject matter are considered non-statutory. Cf. In re Lintner, 458 F.2d 1013, 1015, 173 USPQ 560, 562 (CCPA 1972) (“Claims which are broad enough to read on obvious subject matter are unpatentable even though they also read on nonobvious subject matter.”) During prosecution, applicant can amend to limit the claims to statutory subject matter.

### **Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by **Gase** (US 6,363,081).

**As to claim 1:**

Gase teaches a system for port and protocol sharing (*a port sharing protocol enables multiple applications to listen to the same port.... multiple applications are able to receive the same data packets received over one port; see the Abstract and col.1, line 51-col.2, line 9*) comprising:

- a layered hierarchy of application processes and protocols (*a port sharing protocol is implemented into the applications to facilitate delivery of data packets received over a single network port to all of the applications that contest ownership of that single port...multiple applications are able to receive the same data packets received over one port; col.1, line 51-col.2, line 9 and col.3, lines 1, col.4, line 29*);
- an interlayer communications process disposed between each layer in said layered hierarchy (*the first client 24 is capable of supporting both the receiving protocol (e.g., TCP/IP) and the transmitting protocol (e.g., IPX). When a UDP packet 28 is received at the contested port 34, the primary application 30 retransmits the UDP packet 28 over the registered port to the third client 46 using the transmitting IPX protocol. The remote secondary application 48 receives and processes the data packet for its own purposes...The monitoring application 56 registers itself with each primary application 54(1)-54(3) via the registration ports 58(1)-58(3) corresponding to the contested ports 52(1)-52(3). That is, the monitoring application 56 submits a registration request to each primary application over a corresponding registration port. The primary applications add the monitoring*

*application 56 to their distribution lists. When the primary applications receive data packets over their contested ports, they retransmit the packets to the monitoring application 56. As a result, the monitoring application 56 is able to keep tabs on packets arriving over multiple port; see the discussion beginning at col.4, line 22); and*

- *a communications layer programmed to moderate access by all of said application processes and protocols in said layered hierarchy to a single logical port (The client 24 supports multiple applications that might be interested in listening to the same network port. Each application is configured to support a port sharing protocol that enables multiple applications to receive the packets being sent over the single "contested" port...The primary application 30 listens to all incoming data packets on the contested port 34. When a data packet is received, the primary application 30 delivers a copy of the data packet over the registration port 36 to all secondary applications registered in the distribution list 38; see the discussion beginning at col.3, line 1).*

**As to claim 2:**

Gase teaches each said interlayer communications process comprises: a list of application process and protocols coupled to said interlayer communications process at a next higher level in said hierarchy; and, at least one discrimination process programmed to select a particular one of said application process and protocols in said list to which to route selected incoming traffic (*see the discussion beginning at col.3, line 1*).

**As to claim 3:**

Gase teaches said communications layer comprises a process programmed to map incoming traffic in said single logical port to selected ones of said application process and protocols (*see the discussion beginning at col.3, line 1 and col.5, line 4*).

**As to claim 4:**

Gase teaches said at least one discrimination process comprises at least one selectable discrimination algorithm based upon at least one attribute associated with at least one of said application processes and protocols (*see the discussion beginning at col.5, line 4*).

**As to claim 5:**

Gase teaches said at least one attribute comprises an attribute selected from, among other things, a number of layers of application processes and protocols disposed within said hierarchy above said interlayer communications process (*see the discussion beginning at col.5, line 4*).

**As to claim 6:**

Gase teaches said at least one selectable discrimination algorithm comprises a pluggable discrimination algorithm (*see the discussion beginning at col.5, line 23*).

**As to claim 7:**

The rejection of claim 1 above is incorporated herein in full. Additionally, Gase teaches selecting a particular application/protocol layer in a higher one of said two layers to which said traffic is to be routed; and, routing said traffic to said selected particular application/protocol layer (*see the discussion beginning at col.3, line 1*).

**As to claim 8:**

Gase teaches selecting a subsequent application/protocol layer in a higher one of two other layers to which said traffic is to be routed; and, routing said traffic to said further selected particular application/protocol layer (*see the discussion beginning at col.3, line 1*).

**As to claim 9:**

Gase teaches adding an additional application/protocol layer to the hierarchy; considering said additional application/protocol layer in said selecting step; and, when selected, routing said traffic to said additional application/protocol layer (*see the discussion beginning at col.5, line 39*).

**As to claim 10:**

Refer to the discussion of claim 5 above for rejection.



**As to claim 11:**

The rejection of claim 1 above is incorporated herein in full. Additionally, applying a discrimination algorithm to a selection process in which a particular application/protocol layer in a listing of adjacent application/protocol layers is selected to receive traffic flowing through the hierarchy (*see the discussion beginning at col.5, line 4*); inserting a new application/protocol layer adjacent to said particular application/protocol layer in the hierarchy; adding said new application/protocol layer to said listing; and, replacing said discrimination algorithm with another discrimination algorithm programmed to consider said new application/protocol layer during said selection process (*see the discussion beginning at col.5, line 39*).

**As to claim 12:**

Gase teaches performing said inserting, adding and replacing steps without decoupling or disabling other applications and protocols in the hierarchy (*see the discussion beginning at col.5, line 39*).

**As to claim 13:**

Refer to the discussion of claim 5 above for rejection.

**As to claims 14-16:**

Refer to the discussions of claims 7-9, respectively, for rejections.

**As to claim 17:**

Refer to the discussion of claim 5 above for rejection.

**As to claims 18 and 19:**

Refer to the discussions of claims 11 and 12, respectively, for rejections.

**As to claim 20:**

Refer to the discussion of claim 5 above for rejection.

### **Conclusion**

5. The prior art made of record, see PTO 892, and not relied upon is considered pertinent to applicant's disclosure. Applicant should review these references carefully before responding to this office action.

### **Contact Information**

6. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM 6:00PM. The examiner can also be reached on alternative Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM THOMSON can be reached at (571) 272-3718.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this action should be mailed to:**

Commissioner for patents

P O Box 1450

Alexandria, VA 22313-1450

A handwritten signature in black ink, reading "Van H. Nguyen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Van H. Nguyen

Patent Examiner, AU 2194